

CRIMINAL JURISPRUDENCE & PRACTICE  
COMMITTEE

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Hon. David A. Hoort  
8th Circuit Court  
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May 26, 2011

Corbin Davis  
Clerk of the Court  
Michigan Supreme Court  
P.O. Box 30052  
Lansing, MI 48909

**RE: ADM File No. 2010-17 - Proposed Amendment of MCR 3.707**

Dear Clerk Davis:

At its May 10, 2011 meeting, the Executive Committee of the State Bar of Michigan considered the above rule amendment published for comment and authorized the Criminal Jurisprudence & Practice Committee to advocate its position.

The Criminal Jurisprudence & Practice Committee supports the proposed amendment if a good cause exception is retained in the court rule to allow for a change in circumstances that would justify re-visiting the Personal Protection Order. Respectfully, the use of a good cause provision in our Michigan Court Rules and Statutes is an accepted and appropriate safeguard to protect against abuse while allowing access to the courts if there is legal and factual justification or corresponding change in circumstances.

The Committee would thereby ask that you consider inclusion of the following language: *The respondent may file a motion to modify or terminate an ex parte personal protection order or an ex parte order extending a personal protection order and request a hearing within 14 days after being served with, or receiving actual notice of, the order. Any motion otherwise to modify or terminate a personal protection order by the respondent requires good cause.*

The absence of such language may lead to unintended consequences. In the following examples, the Personal Protection Order is entered not on an ex parte basis, and the petitioner, for whatever reason, does not petition to modify or terminate the Personal Protection Order:

1. If the Personal Protection Order prohibits respondent from appearing at a specified location which is owned by the respondent and thereafter petitioner moves from that address; the respondent would be unable to petition to modify or terminate the personal protection order to return to his/her property.
2. If the Personal Protection Order prohibits respondent from having contact with his/her child and (s)he later receives custody or parenting time with

child; the respondent would still not be allowed to file a petition to modify or terminate the personal protection order to have contact with his/her child.

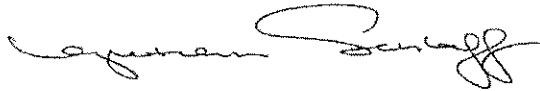
3. If a Personal Protection Order is issued following an allegation of child abuse and the respondent is found not guilty at trial; the respondent would not be able to modify or terminate the personal protection order to have contact with his/her child.
4. If a Personal Protection Order is issued against a victim of domestic violence, the victim/respondent would not be able to modify or terminate the Personal Protection Order.

If you have any questions, please feel free to contact us at your convenience. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "David A. Hoort".

Judge David A. Hoort  
Co-Chair  
Criminal Jurisprudence and Practice Committee

A handwritten signature in cursive script that reads "Gretchen A. Schlaff".

Gretchen A. Schlaff  
Co-Chair  
Criminal Jurisprudence and Practice Committee

CRIMINAL JURISPRUDENCE & PRACTICE COMMITTEE

Respectfully submits the following position on:

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ADM File No. 2010-17

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The Criminal Jurisprudence & Practice Committee is comprised of members appointed by the President of the State Bar of Michigan.

The position expressed is that of the Criminal Jurisprudence & Practice Committee.

The State Bar of Michigan's position on this matter is to support the proposal and authorize the Criminal Jurisprudence & Practice Committee to advocate its position.

The total membership of the Criminal Jurisprudence & Practice Committee is 22.

The position was adopted after discussion and e-vote. The number of members in the decision-making body is 22. The number who voted in favor to this position was 16. The number who voted opposed to this position was 0.